

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNETH FORTUNE,)
)
Plaintiff,)
)
vs.) Civil Action No. 04 - 377
)
CARL HAMBER, Unit Manager;) Judge Terrence F. McVerry
MARTIN L. DRAGOVICH,) Magistrate Judge Lisa Pupo
Superintendent; THOMAS L.) Lenihan
JAMES, Chief Grievance)
Coordinator; C.O. BASEMORE,)
Guard; CAROL BAKER, Hearing) Doc. No. 89
Examiner; C.O. LITCHARD, Guard;)
C.O. WIRT, Sergent; C.O. CRAIG,)
Guard; C.O. HARMON, Sergeant;)
ROBERT STEVENS, Unit Manager;)
KAREN PATTERSON, Accountant;)
JEAN W. SCOTT, Business)
Manager; DONALD L. KECHNER,)
)
Defendants.)

ORDER

On February 14, 2008 Defendants filed a Motion for Summary Judgment in the above action. According to the federal rules of civil procedure, Plaintiff's response was due within 30 days. Nothing was filed by Plaintiff until July 14, 2008 at which time he filed a motion for extension of time to file a response, alleging that he has been unable to use the prison law library.

In support of this claim Plaintiff attaches his requests to use the library, the denials and his grievances regarding same. According to this documentation, Plaintiff's requests were made on March 28, 16 days after his response was due. In addition, the grievance denial states that he would be allowed to use the law

library on afternoons and weekends as he had requested by providing evidence of a court deadline. Plaintiff had a deadline that was already passed but there is no indication that he notified the administration of same. The documentation further indicates that he did not try to access the law library again until June 2, although he did find time to appeal the denial of the grievance. I suggest that Plaintiff's time would have been better spent trying to use the library at the times available or notifying the administration that he had a court deadline. In any event, he now has a deadline of August 18, 2008 pursuant to this order, to respond to the motion for summary judgment. Therefore,

IT IS ORDERED this 21st day of July, 2008, that Plaintiff's Motion for extension is **GRANTED** and he is given until **August 25, 2008** to respond to the motion for summary judgment filed on February 14, 2008. No further extensions will be granted and the motion will be decided without the benefit of a response if none is filed.

IT IS FURTHER ORDERED that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(A), and Local Rule 72.1.3, the parties are allowed ten (10) days from the date of service to file an appeal from this order to the District Court. Any opposing party shall have ten (10) days from the date of service of the appeal to respond thereto. Failure to timely file

an appeal may constitute a waiver of any appellate rights.



LISA PUPO LENIHAN
U.S. Magistrate Judge

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counsel of record